IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.404 OF 2004
IN
WRIT PETITION NO.5861 OF 2004

Ramesh Kisan Singh Langdewale Applicant

versus

State of Maharashtra and others

Mr.Jagdish G. Reddy, adv. for petitioner.

Mr.P.I.Khemani, AGP for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 8th October 2004

PC :

1. This Letters Patent Appeal is directed against order of the learned Single Judge in Writ Petition No.5861 of 2004.

2. The appellant before us is the original petitioner. In the writ petition he impugned the order dated 17th July 2004 passed by the Minister of State for Home, Maharashtra State, Mumbai dismissing his appeal and confirming the order

dated 2nd May 2001 of the Deputy Commissioner of Police, Solapur. By these orders, licence issued to the petitioner for conducting business of Video Cinema at Solapur is cancelled. The cancellation is on the ground that petitioner has not paid Entertainment duty in respect of tickets issued to 28 persons who have visited the video cinema hall. It is pointed out that on 3rd February 2001 the Collector, Solapur made a surprise visit to the cinema hall where a Hindi Movie was being screened by the petitioner. About 44 persons were permitted to enter the cinema hall. It was found that 16 of them had tickets with them whereas balance 28 did not have any tickets. On that basis it was presumed that the petitioner has not paid entertainment duty. A show cause notice was issued and explanation was sought from the petitioner. After considering the explanation and submissions made during personal hearing, impugned orders have been passed.

3. In our view, the learned Single Judge ought to have appreciated the fact that petitioner is running the cinema hall since 1987. It was for the first time that the petitioner committed a breach of the terms and conditions of the

licence. The breach was only of non payment of entertainment duty for January 2001. For such a breach, punishment of cancellation of licence was too harsh and disproportionate. The Minister ought to have gone into the aspect of proportionality of punishment and in view of peculiar facts and circumstances ought to have interfered with the order of the Commissioner of Police, H.O; Solapur. It is not as if the Minister does not have any power to interfere with quantum of punishment. In the present case the finding recorded by the Minister that petitioner is disentitled to hold the licence is totally perverse and vitiated. The Minister has not held that barring this lapse there is other breach of the terms and conditions or that past conduct of petitioner is blameworthy. When this was the first instance, an extreme punishment of cancellation of licence was disproportionate, to say the least.

4. In our view, after perusing the orders impugned in the writ petition, the learned Judge was in error in observing that the petitioner has not made out any case for interference under Article 226 of the Constitution of India with the quantum of punishment. The reliance placed on

powers of appellate authority to interfere with quantum of punishment is appropriate. In these facts and circumstances, such power ought to have been exercised and the learned Single Judge should have imposed a lesser punishment. In our considered view, the learned Single Judge ought to have exercised his jurisdiction and interfered with the quantum of punishment in the light of submission of petitioner that the entertainment duty for the relevant period has been paid. Further, the petitioner has made a categorical statement that he shall continue to pay the entertainment duty in accordance with law. The aforesaid facts have not been seriously disputed by learned AGP appearing for respondents.

5. In our view, ends of justice would be met if the punishlment imposed on the petitioner is substituted as under :-

A) The licence of petitioner is suspended till 31st December 2004;

B) In addition to such suspension, petitioner shall pay a fine of Rs.10,000/- (Rs.Ten thousand only). The fine to be paid within a period of two weeks from today;

C) Petitioner to give an undertaking to this Court that he shall abide by all terms and conditions of the licence as well as provisions of Bombay Entertainment Duty Act, 1923 in future and in case of any breach, it will be open for the authorities to impose such punishments as are permissible in law.

6. The orders impugned in Writ Petition No.5861 of 2004 are substituted as above. The writ petition stands allowed only to the aforesaid extent. The order passed by learned Single Judge is accordingly set aside. Letters Patent Appeal is disposed of. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)